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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/972,424	10/04/2001	Chris E. Matichuk	03-509-A	8244
20306 7590 02/15/2011 MCDONNELL BOEHNEN HULBERT & BERGHOFF LLP 300 S. WACKER DRIVE 32ND FLOOR CHICAGO, IL 60606			EXAMINER CHOUDHURY, AZIZUL Q	
			ART UNIT 2453	PAPER NUMBER
			MAIL DATE 02/15/2011	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/972,424

Applicant(s)

MATICHUK ET AL.

Examiner

AZIZUL CHOUDHURY

Art Unit

2453

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 February 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Krista M. Zele/
Supervisory Patent Examiner, Art Unit 2453

/A. C./
Examiner, Art Unit 2453

Continuation of 11, does NOT place the application in condition for allowance because: the applicant's arguments are not deemed fully persuasive. The following are the examiner's response to the applicant's concerns. The first point of contention addressed by the applicant alleges that neither prior art show remotely enabling recording from a different location. The examiner respectfully disagrees. The language "remote" and "different physical location" is not finite in scope. Remote could mean a another room, a another country or just another 5 inches away. Killian's recording device (element 20, Figure 1) is separate from the database server and the television; see at least Figure 1, Killian. Hence they are not within one device/component nor are they located at the same exact location. They are all remote from one another. Second, even for the claims that teach the programming through a web/network, such a feature is indeed taught by at least Klosterman. Klosterman teaches data stream being sent to a web browser or a personal computer (pc); see column 4, lines 56-60, Klosterman. To send data to the web browser or personal computer, a web/network is inherently required. In addition, it is further taught how the transmission medium can be optical fiber (fiber optic), cable or telephone (all networks and web mediums); see column 4, lines 45-47, Klosterman. After the show data (the show data can be an advertisement) is sent to the browser/pc, the user is able to click on the advertisement and is able to schedule a recording; see column 2, lines 14-17, Klosterman. Klosterman's design allows the recording device to be a separate device from the pc; see column 4, lines 56-60, Klosterman. Being a separate device, the recording device must remotely receive the recording command from the web browser/pc. Furthermore, Killian also teaches a record command being sent to the recorder (equivalent to remote programming over a network); see column 2, lines 22-24, Killian.

The second point of contention addressed by the applicant alleges that neither prior art teaches one-click programming. The examiner disagrees with this allegation. Klosterman teaches how a user can click on an ad which results in the recording of the corresponding infomercial; see column 2, lines 14-17, Klosterman. This method entails a user simply having to click on an ad once, and recording of the associated broadcast/infomercial commences. This is a method of one-click programming.